

PHILLIP A. TALBERT
United States Attorney
KIMBERLY A. SANCHEZ
Assistant United States Attorney
2500 Tulare Street, Suite 4401
Fresno, CA 93721
Telephone: (559) 497-4000
Facsimile: (559) 497-4099

Attorneys for Plaintiff
United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GUY STOWERS,

Defendant.

CASE NO. 1:22-CR-00231 ADA-BAM

STIPULATION CONTINUING STATUS
CONFERENCE AND REGARDING
EXCLUDABLE TIME PERIODS UNDER SPEEDY
TRIAL ACT; FINDINGS AND ORDER

DATE: December 13, 2022

TIME: 1:00 p.m.

COURT: Hon. Barbara A. McAuliffe

This case is set for a status conference on December 14, 2022 in front of the Honorable Barbara A. McAuliffe, U.S. Magistrate Court Judge. The parties stipulate and request to continue the status conference to February 22, 2023 at 1:00 p.m.

On May 26, 2021, the Court issued General Order 631, which provided for a reopening of the courthouse in June 2021, recognized the continued public health emergency, continued to authorize video or teleconference court appearances in various cases, and noted the court's continued ability under the Coronavirus Aid, Relief, and Economic Security (CARES) Act (the "Act") to continue trials and other matters, excluding time under the Act. On June 27, 2022, the Court issued General Order 652, which "authorized the use of videoconference and teleconference technology in certain criminal proceedings under the in the Eastern District of California." This and previous General Orders highlight and were entered to address public health concerns related to COVID-19. Pursuant to F.R.Cr.P. 5.1(c) and (d), a preliminary hearing must be held "no later than 14 days after initial appearance if the

defendant is in custody,” unless the defendant consents and there is a “showing of good cause”, or if the defendant does not consent and there is a “showing that extraordinary circumstances exist and justice requires the delay.” Here, the defendant consents and there is good cause.

Although the General Orders address the district-wide health concern, the Supreme Court has emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally or in writing”).

Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory and inexcusable—General Orders 611, 612, 617, 631 and 652 require specific supplementation. Ends-of-justice continuances are excludable only if “the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics, natural disasters, or other emergencies, this Court has discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

1 In light of the societal context created by the foregoing, this Court should consider the following
2 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
3 justice exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date
4 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any
5 pretrial continuance must be “specifically limited in time”).

6 **STIPULATION**

7 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
8 through defendant’s counsel of record, hereby stipulate as follows:

9 1. Defense counsel needs additional time to review discovery, ascertain whether further
10 investigation is needed and pursue it if so, and to engage in discussions with the government regarding
11 any potential resolution of the case, motion schedule if warranted, or trial setting. Since the last
12 continuance request, the parties have engaged in further review of evidence and have sought additional
13 reporting from law enforcement. The government is awaiting one report and will forward that to
14 defense upon receipt. Additionally, the government is anticipating receipt of a phone extraction, and
15 will also share that with defense once received. Those items should be received by the government
16 within the coming week.

17 2. By this stipulation, defendant now move to continue the December 14, 2022 status
18 conference to February 22, 2023 and to exclude time from December 14, 2022 to February 22, 2023
19 under Local Code T4.

20 3. The parties agree and stipulate, and request that the Court find the following:

21 a) The government has represented that the discovery associated with this case
22 includes investigative reports, videos, photos, and related documents in electronic form. All of
23 this discovery has been either produced directly to counsel and/or made available for inspection
24 and copying, except supplemental discovery noted above.

25 b) The government does not object to the continuance.

26 c) In addition to the public health concerns cited by the General Orders and

27
28 ¹ The parties note that General Order 612 acknowledges that a district judge may make
“additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.
Cal. March 18, 2020).

1 declarations of judicial emergency, and presented by the evolving COVID-19 pandemic, an
2 ends-of-justice delay is particularly apt in this case because:

- 3 • Defendant's ability to prepare for trial or a plea has been inhibited by the public
4 health emergency;
- 5 • Defendant needs additional time to review discovery, and conduct additional
6 investigation; and

7
8 d) Based on the above-stated findings, the ends of justice served by continuing the
9 case as requested outweigh the interest of the public and the defendant in a trial within the
10 original date prescribed by the Speedy Trial Act.

11 e) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
12 et seq., within which trial must commence, the time period of December 14, 2022 to , February
13 22, 2023, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local
14 Code T4] because it results from a continuance granted by the Court at defendant's request on
15 the basis of the Court's finding that the ends of justice served by taking such action outweigh the
16 best interest of the public and the defendant in a speedy trial.

17
18 **[Remainder of page intentionally left blank.]**
19
20
21
22
23
24
25
26
27
28

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: December 6, 2022

PHILLIP A. TALBERT
United States Attorney

/s/ KIMBERLY A. SANCHEZ
KIMBERLY A. SANCHEZ
Assistant United States Attorney

Dated: December 6, 2022

/s/ MAI SHAWWA
Attorney for Defendant

ORDER

IT IS SO ORDERED that the status conference is continued from December 14, 2022, to **February 22, 2023, at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe**. Time is excluded pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv).

IT IS SO ORDERED.

Dated: **December 7, 2022**

/s/ *Barbara A. McAuliffe*
UNITED STATES MAGISTRATE JUDGE